

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Louis Merriweather,
Petitioner

vs

Case No. C-1-02-369
(Spiegel, J.; Hogan, M.J.)

James Erwin,
Respondent

ORDER

This habeas corpus action brought pro se pursuant to 28 U.S.C. § 2254 is before the Court on petitioner's motions to amend the petition (Doc. 17) and "to advance his cause in the instant case at bar" (Doc. 19).

In his motion to amend, petitioner requests that three additional grounds for relief, which he alleges are based on "new[ly] discovered evidence," be included as claims in the petition. (Doc. 17). In essence, these additional claims are: (1) ineffective assistance of petitioner's trial counsel in inducing petitioner to plead guilty before receiving the "'benefit' of discovery" requested from the State; (2) ineffective assistance of petitioner's trial counsel in failing to reasonably investigate eyewitnesses; and (3) a due process violation when petitioner was arrested and indicted "without the charging instrument of an affidavit or complaint, listing all the alleged elements of the alleged [rape] offenses." (*See id.*). Petitioner's motion to amend (Doc. 17), which has not been opposed by respondent, is GRANTED. Respondent is hereby ORDERED to file a supplemental return of writ responding to the allegations of the additional grounds for relief set forth in petitioner's motion to amend (*see* Doc. 17) within forty (40) days of the date of filing of this Order.

Because petitioner has been allowed to amend the petition to include additional grounds for relief, petitioner's cause of action is not ripe for ruling at this time. Therefore, petitioner's motion to advance his cause (Doc. 19), which also has not been

opposed by respondent, is DENIED. Petitioner is forewarned that by adding the additional grounds for relief, which appear from the record to be unexhausted in the state courts (*see* Doc. 21), his petition may be subject to a stay order until he has exhausted his available state remedies.

Date: 4/28/04
cbc

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge

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